

interstate aspects as well and it is "not possible to separate the interstate and intrastate components of the asserted FCC regulation."¹³ As examples of the "impossibility" exception to Section 2(b), the Court cited the 4th Circuit's decisions in NCUC I and NCUC II.

As made plain in NCUC I, the impossibility exception does not require that compliance with different state and federal rules be physically impossible; it is enough that compliance with both sovereigns is not possible as a practical matter. For that reason, the court upheld the Commission's decision to promote competition in the customer-premises equipment ("CPE") market by preempting state regulations prohibiting telephone subscribers from attaching a non-telephone-company phone to the telephone network unless the phone was used exclusively for interstate service.¹⁴ The court found that telephones (CPE) are used jointly for intrastate and interstate communications and therefore a requirement that their use be limited to one or the other was a "practical and economic impossibility."

In NCUC II, the 4th Circuit reaffirmed its NCUC I holding and rejected the notion that intrastate facilities were those used "predominantly" for local communications. The court explained that such a test would deny the Commission jurisdiction over any jointly used property.¹⁵ The fact that almost all CPE

¹³ 476 U.S. at 375 n.4.

¹⁴ 537 F.2d at 790-96.

¹⁵ 552 F.2d at 1045-49.

is used predominantly for local communications, held the court, should not be "confuse[d]" with the "statutory division of decisionmaking power."¹⁶ According to the court, Congress did not create a regulatory scheme "that depends on the calling habits of telephone subscribers to determine the jurisdictional competence of the FCC versus state utility commissions."¹⁷ In short, the fact that CPE was used predominantly for intrastate calls did not mean that the Commission was without preemption power under the impossibility exception.

B. The Iowa Utilities Bd. Decision.

In Iowa Utilities Bd., the Eighth Circuit held that the Commission had exceeded its jurisdiction in promulgating various rules pursuant to the local competition provisions, 47 U.S.C. § 251(c)(2)-(4), of the Communications Act ("Act")¹⁸ which, on their face, divide various regulatory responsibilities between the Commission and the states. Looking to the statute's plain language, the court concluded that it "directly grant[ed]" and "undeniably authorize[d]" the grant of pricing authority to the states. Finding no similar express authorization to the Commission, the court held that the statute's plain language did

¹⁶ Id. at 1046.

¹⁷ Id.

¹⁸ The local competition provisions, which require incumbent LECs to provide competitors with (1) interconnection, (2) access to unbundled network elements, and (3) certain telecommunications services priced at wholesale rates.

not empower the agency to issue its local competition pricing rules.

The impossibility doctrine, held the court, was likewise unavailable because the express statutory grant to the states demonstrated that Congress did not intend for the Commission to have any authority, let alone preemption authority.¹⁹ In reaching that conclusion, the court observed that its decision was one of first impression because:

none of the courts invoking the impossibility exception had the assistance of a federal statute that specifically determined who had jurisdiction over the telecommunications area at issue, those courts had to resort to analyzing the interstate/intrastate character of the telecommunications services, as required by Sections 151 and 152 of the Communications Act, in order to make such a determination. Here, however, subsections 252(c)(2) and 252(d) clearly assign jurisdiction . . . to the state commissions, thus avoiding the need to analyze the interstate/intrastate character of these services.²⁰

In dicta, the court conducted what it called "a traditional analysis of the interstate/intrastate quality of the local competition provisions."²¹ It concluded that the subject matter of those provisions -- interconnection, unbundled access, resale, and transport, etc. -- were "fundamentally intrastate in character" and thus state regulation could not negate the

¹⁹ Iowa Utilities Bd., 1997 WESTLAW 403401 at *8. The court also observed that ratemaking was generally capable of being separated into its intrastate and interstate components. Id. However, the court did not make any conclusion concerning the separability of the provisions before it.

²⁰ Id. *7-8.

²¹ Id. at *9.

Commission's lawful authority over interstate matters.²² That was so, the court said, even though the local competition provisions "may have a tangential impact on interstate services."²³

C. Section 222(e) Differs Significantly From The Statutory Provisions At Issue In Iowa Utilities Bd.

The Eighth Circuit's decision centers on the fact that the local competition provisions at issue before it contained express delegations of authority to the states. That is not the case with Section 222(e).

Section 222(e) contains no express delegation to, let alone any mention of, the states. Although the Commission is not expressly mentioned either, it is well-established, of course, that there need not be an express delegation for the Commission to have jurisdiction over matters contained in the Act.²⁴ The

²² Id. (access to an ILEC's network in order to provide local telephone service is an intrastate activity "even though the local network . . . is sometimes used to originate or complete interstate calls").

²³ Id.

²⁴ For that matter, the Commission's jurisdiction is not predicated on the matters being "expressly" contained in the Act. See, e.g., United States v. Southwestern Cable Co., 392 U.S. 157, 169-178 (1968) (upholding Commission jurisdiction over cable television despite no express statutory statement of such authority and Commission had earlier determined that it lacked such power and had been turned down twice by Congress in efforts to obtain statutes expressly granting

Eighth Circuit's decision is not to the contrary;²⁵ it holds only that where there is an express delegation to the states, the Commission must have its own express delegation or show impossibility in order to regulate the subject-matter granted to the states. As there is no express delegation here, Iowa Utilities Bd. does not affect the Commission's jurisdiction under Section 222(e).

Another critical distinction between the local competition provisions at issue in Iowa Utilities Bd. and Section 222(e) is the different character of the subject-matter governed by the statutes. The local competition provisions are found in Part II of Title II of the Act and are concerned with competitive LECs' ability to obtain access to incumbent LECs' telephone networks. For that reason, the Eighth Circuit held that matters covered by the local competition provisions -- interconnection, unbundling of network elements, transport, etc. -- were fundamentally intrastate in character. Section 222(e), in contrast, is found in Part I and not Part II of Title II. That is significant as it means that Section 222(e) is not part of the local competition provisions and thus is not concerned with the opening of the local exchange market to competitors. Rather, Section 222(e) is singularly devoted to the fostering of competition in the directory market. That market is not fundamentally intrastate in

²⁵ Given that Southwestern Cable is a Supreme Court decision, and therefore binding on the Eighth Circuit, Iowa Utilities Bd. can not be to the contrary.

character as shown below in Section V.1. Consequently, much of Iowa Utility Bd. has no applicability here.

Indeed, the Eighth Circuit's conclusions concerning the applicability of Section 2(b) to the local competition provisions are not at all relevant to subscriber list information. As shown in Section V, the Commission's authority over SLI would not intrude upon a matter fundamentally intrastate in nature and is based upon valid federal interests that would be negated by conflicting state regulations. Thus, the Commission's jurisdiction is not limited by operation of Section 2(b).

D. Section 222(e) Satisfies The Impossibility Exception To Section 2(b).

Although ADP does not believe that Section 2(b) applies to the Commission's jurisdiction over SLI, Section 222(e) easily satisfies the impossibility exception to Section 2(b). As explained by the D.C. Circuit, the impossibility exception has three elements: (1) the matter to be regulated must have both interstate and intrastate aspects; (2) Commission preemption must be necessary to protect a valid federal regulatory objective; and (3) state regulation would negate the Commission's exercise of its own lawful authority "because regulation of the interstate aspects of the matter cannot be 'unbundled' from regulation of the intrastate aspects."²⁶ SLI satisfies all three elements of this test.

²⁶ Maryland PSC, 909 F.2d at 1515 (upholding Commission's preemption of states' authority to set the rates that LECs charged IXCs for DNP service, the disconnection by a LEC of

1. SLI Has Both Interstate And Intrastate Aspects.

Subscriber list information is used for both interstate and intrastate purposes. For example, LECs often gather and combine SLI from multiple states into the same directory. There are listings from businesses from six different states²⁷ plus the District of Columbia on page 221 of the White Pages section of Bell Atlantic's Yellow Pages directory for the District of Columbia. Cincinnati Bell's residential directories combine listings from Ohio, Kentucky, and Indiana.²⁸ Independent directory publisher and ADP member, The Sunshine Pages, reports that its Memphis directory contains listings from more than 20 states and two foreign countries.

Although a majority of a LEC's directories are probably distributed within its LEC's service area, almost all LECs do or will provide (sell) their directories to interested entities from other states or countries. In addition, many LECs place their SLI in Internet directories, thereby making the SLI accessible to interested users worldwide. BellSouth, US West, Ameritech, and PacBell have combined their "yellow pages" Internet offerings into one common website. BOCs have also grouped together to offer a single search interface for Internet White Pages. The

a local subscriber's telephone for failure to pay his long distance bill).

²⁷ The states were: California, New York, New Jersey, Pennsylvania, Maryland and Virginia.

²⁸ Cincinnati Bell's business directories contain listings from additional states.

BOCs are not alone, other LECs and independent directory publishers offer (or are in the process of offering) Internet directories.²⁹

More critically, there is no requirement that a LEC provide its SLI only to publishers intending to make intrastate directories or to publishers located in the same state as the LEC. Section 222(e)'s command is much broader, requiring LECs to sell their SLI to any prospective directory publisher. Such publishers need not be within the LEC's state or intend to publish a directory for intrastate use. BellSouth, for example, sells its listings for Louisiana through Birmingham, Alabama, and Atlanta, Georgia.³⁰ Indeed, one of ADP's members, The Sunshine Pages, purchases and combines listings from 4 states into one directory.

It is also noteworthy that end-users employ directories for both interstate and intrastate purposes. People living in Maryland, for example, may use their directory to obtain the phone number or address of a restaurant in nearby Virginia. An Ohio entity seeking to do business with multiple Florida

²⁹ The interstate sale of SLI or posting of SLI on the Internet establishes that SLI is not a purely intrastate service. See People of the State of California v. FCC, 4 F.3d 1505, 1514 (9th Cir. 1993) ("The dividing line between the regulatory jurisdictions of the FCC and states depends on the nature of the communications which pass through facilities [and not on] the physical location of the lines.") (quoting NARUC, 746 F.2d at 1498)).

³⁰ A Canadian publisher, for example, may wish to obtain SLI from NYNEX in order to create a New York directory to sell throughout Canada.

companies may obtain a BellSouth directory or obtain BellSouth listings over the Internet for the purpose of making interstate calls. Given the above, it should be uncontroverted that SLI has both interstate and intrastate aspects.³¹

2. The Commission Has Valid Federal Objectives In Regulating SLI.

The Commission has ample justification for issuing rules implementing Section 222(e), even rules preempting conflicting state SLI regulation.³² Section 222(e) requires that SLI be provided at reasonable rates, terms, and conditions. Thus, the Commission certainly has a viable interest in ensuring that state regulation does not permit unwarranted charges or unreasonable conditions.³³ Indeed, the Conference Report -- -- states that Section 222(e) was enacted to "guarantee[] independent publishers access to [SLI]."³⁴ Unreasonable rates or conditions would

³¹ See Maryland PSC, 909 F.2d at 1515 (holding that DNP was not exclusively intrastate: "we have frequently held that services provided locally by the LECs which support access to the interstate communications network have interstate as well as intrastate aspects").

³² As noted in its pleadings in this proceeding, ADP believes that states should be permitted to regulate SLI provided that such regulations are consistent with, and do not frustrate, those of the Commission.

³³ See Maryland PSC, 909 F.2d at 1515-16 (element two of impossibility met where Commission's preemption was designed to prevent the interstate ratepayer from paying "more than market value and more than the FCC believes is just for services provided by the LEC").

³⁴ See H. R. Conf. Rep. No. 230, 104th Cong., 2d Sess. 205 (1996).

therefore deprive competing directory publishers of the guarantee expressly provided by Congress.³⁵

ADP notes also that the Commission has a valid interest in promoting competition in the directory publishing market. That is the very essence of Section 222(e). Such interest is sufficient to satisfy element two of the impossibility test.³⁶ ADP has supplied numerous examples of anticompetitive behavior by LECs with respect to their provision of SLI.³⁷

3. SLI Cannot Be Separated Between Interstate And Intrastate And Thus State Regulations Could Negate The Agency's Authority.

It would be impractical, if not technically impossible, to separate the intrastate aspects of SLI from the interstate. Much like the case in NCUC I and NCUC II, there is no practical reason for entities to have two separate telephone directories based on the location of the listed party. Indeed, such a scenario would permit the Commission to regulate terms only over the interstate directory. Moreover, it is not at all clear that such separation is even possible because the use of SLI for interstate or

³⁵ See Maryland PSC, 907 F.2d at 1515-16 (Commission had valid interest in preempting unwarranted charges imposed by the states).

³⁶ See Maryland PSC, 909 F.2d at 1512 (upholding FCC preemption designed to foster competition in the billing and collection area); NCUC I, 537 F.2d at 795-96 (preemption was designed to foster competition in the CPE market).

³⁷ In that regard, two members of the conference committee expressly stated that Section 222(e) was passed to curtail LEC's anticompetitive behavior towards independent directory publishers.

intrastate purposes shifts depending on (1) the location of the receiving publisher; (2) the geographic content contained in the directory; (3) the distribution area of the directories; and (4) the location and desire of the end user - is the consumer located in-state and/or is the consumer using the directory to make an intrastate or interstate call.

State regulation, given the impossibility of separating the interstate and intrastate aspects of SLI, could negate the Commission's exercise of its jurisdiction over SLI. The Florida PSC, for example, permits BellSouth to charge a "market based price" of four cents per listing which, as BellSouth admits, represents a 1,300% profit over incremental cost. The Florida PSC also allows BellSouth to charge \$1.50 per new connect listing; that price hinders if not eliminates the ability of many directory publishers to obtain new connect listings.³⁸ The Florida PSC also has defined the term directory to exclude Internet directories. Consequently, a competing directory publisher wishing to produce an Internet directory must obtain listings under BellSouth's more restrictive tariff for directory assistance. Such restrictions, ADP believes, plainly contravene Section 222(e).³⁹

³⁸ ADP notes that the Canadian Radio-Television and Telecommunications Commission requires that new connect or update listings be provided at the same rate as standard listings.

³⁹ See, e.g., NARUC v. FCC, 880 F.2d 422, 428-31 (D.C. Cir. 1989) (upholding Commission preemption of state inside wiring regulations to the extent that such state regulations

IV. The Commission Certainly Has Authority To Implement Section 222(e) In Conjunction With Section 4(i).

The fact that Section 222(e) does not say expressly that "the Commission may issue rules implementing this section" does not mean that the Commission is precluded from doing so. Section 4(i), 47 U.S.C. § 154(i), allows the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions. (emphasis added). In characterizing Section 4(i) as the Commission's "necessary and proper" clause, courts have recognized that Section 4(i) permitted Commission action that is not explicitly authorized to the extent necessary to regulate effectively those matters that are within the Act.⁴⁰

The cases recognizing the Commission's authority under Section 4(i) are numerous. In Nader v. FCC, the D.C. Circuit held that a Commission order prescribing a rate of return for AT&T "was in the public interest, necessary for the Commission to carry out its functions in an expeditious manner, and within the agency's Section 4(i) authority," even though the Act made no mention of any such authority to prescribe a rate of return.⁴¹

negated the federal policy of ensuring a competitive market for inside wiring).

⁴⁰ See New England Telephone and Tel. Co. v. FCC, 826 F.2d 1101, 1108 (D.C. Cir. 1987) (quoting North American Telecomm. Ass'n v. FCC, 772 F.2d 1282, 1292 (7th Cir. 1985)), cert. denied, 490 U.S. 1039 (1989). Other sections conferring similar authority include Section 201(b) and 303(r).

⁴¹ 520 F.2d 182, 204 (D.C. Cir. 1975).

In Lincoln Telephone Co. v. FCC, the court affirmed a Commission order requiring a tariff filing by a telephone company that arguably qualified as a "connecting carrier" where the only provision in the Act expressly requiring carriers to file tariffs; 47 U.S.C. § 203(a), explicitly exempted connecting carriers.⁴² Similarly, in North American Telecomm. Ass'n v. FCC, the 7th Circuit upheld a Commission order requiring the Bell holding companies to file capitalization plans for subsidiary companies organized to sell telephone equipment, because such a requirement "was necessary and proper to the effectuation" of the Commission's functions.⁴³ More recently, in New England Telephone,⁴⁴ the D.C. Circuit affirmed a Commission order requiring telephone companies to refund charges they had collected in excess of the authorized rate of return even though the Act's only provision expressly authorizing refunds "does not apply to the circumstances of this case."

V. Conclusion.

As shown above, the Commission has full jurisdiction over SLI pursuant to Section 222(e). That is made most clear by the fact that Section 222(e) was made part of the Communications Act and is confirmed by the lack of any express delegation to the states anywhere in the statute. Moreover, Section 222(e) is

⁴² 659 F.2d 1092, 1108-09 (D.C. Cir. 1981).

⁴³ 772 F.2d 1282, 1292-93 (7th Cir. 1985)

⁴⁴ 826 F.2d at 1107-1109.

concerned with the promotion of competition in the yellow pages market and not with telecommunications. Thus, Section 222(e) is distinctly different from the provisions that were before the Eighth Circuit in Iowa Utilities Bd. Since SLI is not "fundamentally intrastate in character," Section 2(b) cannot bar the Commission from implementing Section 222(e) and, if necessary, preempting conflicting state regulation. Indeed, state regulation already exists that contravenes Section 222(e)'s plain language. In light of the above, the Commission has both the authority and the obligation to promulgate rules under Section 222(e).

Lucent/AT&T

- Definity
- System 75/85
- Legend
- Partner
- Merlin
- Spirit

Integrated voice mail
for Definity, Merlin,
Legend and Partner

Audio Conferencing System

POLYCOM

Power Protection Equipment

APC
AMERICAN POWER CONVERSION

Regional Sales Manager

-9363

Y'

TIONAL REAL ESTATE

**he
rporation
Memphis**

Presentation Team of

son, Sal Feraci
onson and Feraci
s R. Liles
Engineering, LLC
Wooldridge
Construction

s to

Mayor of Memphis

and

Schmidt

SunShine Pages partners with E.W. Scripps Co., the Cincinnati-based parent company of *The Commercial Appeal*.

You wouldn't expect something as workaday as yellow page listings and advertisements to generate as much of a stir among business owners, but for these entrepreneurs, it is an important and expensive proposition.

"It's a very heated issue," says Susan Acuff, president of Acuff International.

Acuff is happy to see *The SunShine Pages*, which entered the market this year by offering free advertisements in the yellow page section.

"Hopefully it will bring down some of the prices of the (*Yellow Pages*) ads because they are astronomical," Acuff says. She cites as an example a three-quar-

ter is advertising for the first time at a certain size, she says.

"There are so many deals it's like going to Tunica. They offer a first-time ad of a certain size at a certain price. Then the next year they jump that price up considerably and you either pay the higher price or drop the size of your ad," Acuff says. "It's quite a marketing strategy."

Errors in Ads Cited

While Acuff speaks well of the professionalism of the sales people and managers for the *Yellow Pages*, she also cites errors in ads and a high turnover among sales people.

All five business owners called at random had positive comments about the new *SunShine Pages* and the competition
See SUNSHINE, Page 32

On-Line Directories Let Computer Keys Do the Walking for Telephone Information

By Leigh Ann Roman

IF YOU'RE SUCH A NETIZEN THAT you can't tear yourself away from the computer screen to look up a telephone number, not to worry.

The on-line counterparts of independent directory *The SunShine Pages* and *The Real Yellow Pages* from BellSouth offer Memphis-specific yellow page Web sites that allow you to check the number without leaving the Web.

You could check out <http://www.sunshinepages.com> or <http://www.ypp.bellsouth.com>. The *SunShine* site offers all listings found in its print directory with mapping capabilities, as does the BellSouth directory. You can search by name of business, category or zip code.

SunShine's on-line directory also offers advertisers a free advertisement when they buy an ad in the print directory. Although print advertisements were free this year only in the *SunShine Pages*, they will be free on-line "for the long term," says Ken Bickford, director of new media at the *SunShine Pages*.

"What that gives us is a tremendous critical mass of data for Memphians who are trying to locate a dry cleaner or transmission repair shop or even sod and sodding services," he says.

The on-line directory has 2,700 free display ads for Memphis alone, Bickford says. That compares favorably with the entire service area for Nynex Corp., a regional bell operating company which offers about 10,000 paid display ads for its national on-line yellow pages, *Big Yellow*, he says.

"Citizens of Memphis, Tennessee, have more information about businesses in their community than possibly any other city in the world," Bickford says.

Some aspects of the *SunShine Pages* on-line are under construction including a listing of Memphis clubs and organizations

teller machine locations in Memphis, he says. They should be available in July.

Seattle, Wash.-based Infospace, Inc., a large aggregator of information on the Internet, recently purchased Ypi.Net a consortium of independent directory publishers who were pooling their database.

Because of that change, the Memphis *SunShine* site and others in that network will soon see additional information such as national residential listings, local residential listings a city guide and a national E-mail address service, Bickford says.

BellSouth's Memphis site already includes the E-mail service, city guide and local and national residential listings.

It also offers a special mapping capability that it allows the user to designate any address as a landmark and to search for businesses within a certain radius of that landmark, says Kevin Doyle, assistant director of media relations at BellSouth Corp.

Another significant feature of the BellSouth on-line directory is that it is updated every two weeks, Doyle says.

The regular updates and search capabilities make the BellSouth product stand out, Doyle says.

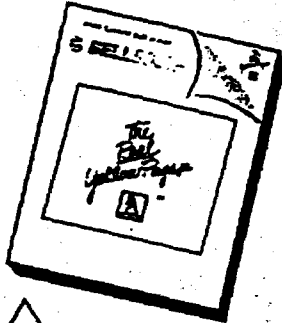
"The search capabilities are unsurpassed," he says. "I have not seen competitive products off the kind and depth of information about the community that we are able to provide."

Community information includes a broad range of information such as tourist attractions, utilities, voting information and a calendar of events.

BellSouth representatives began selling advertising for the on-line product in Memphis only recently, and they should begin appearing later this summer, says David Shipp, information product manager for BellSouth.

Advertising is not free, but a listing on-

Which Directory Is Best For You?



Ask your directory representative these questions before making your business decision.

1

What plans do you have to promote and sustain usage?

Real Yellow Pages: BellSouth spends millions each year in television, radio, billboards, etc. to educate the public on our product.

Other Directory: _____

2

How will usage be measured?

Real Yellow Pages: Usage is measured not only by in-house research, but also by well-known independent sources such as NYPM, National Yellow Pages Monitor, a syndicated research company.

Other Directory: _____

3

What kind of syndicated data do you have to prove usage of your product?

Real Yellow Pages: Through the above mentioned process comes great amounts of data which we share with each business person.

Other Directory: _____

4

Can I talk with advertisers who have done business with your company?

Real Yellow Pages: In our case, yes, almost every business has advertising in our product.

Other Directory: _____

5

Is advanced payment required before the phone book is delivered?

Real Yellow Pages: Typically, no. Your billing occurs monthly on your phone bill after the book is distributed.

Other Directory: _____

6

How often will listings be updated?

Real Yellow Pages: Once a year.

Other Directory: _____

7

How many directories will initially be delivered?

Real Yellow Pages: Everyone with a phone receives a BellSouth directory: Business and Residential.

Other Directory: _____



What is the method of delivery?

Real Yellow Pages: We contract Directory Distributors of America to insure everyone gets a directory.

Other Directory: _____



How will you know about new businesses and residents; will they receive a copy?

Real Yellow Pages: Anyone who sets up phone service, residential or commercial, receives a directory within 2-3 days throughout the year.

Other Directory: _____



How will directories in hotels and motels be replenished?

Real Yellow Pages: Once a year, books are delivered in bulk (normal distribution) with enough to replace lost or stolen books throughout the year.

Other Directory: _____



Is there a contract to place the directories at pay phones?

Real Yellow Pages: All BellSouth pay phones have BellSouth directories, which are replaced annually.

Other Directory: _____



Do you require advertisers to have business/commercial phone service?

Real Yellow Pages: BellSouth requires all listings be commercial to maintain the integrity and accuracy of our product.

Other Directory: _____



Will the directory have a white page section with complete residential listings for the entire area?

Real Yellow Pages: BellSouth updates residential listings in the white pages until publishing dates. This accuracy is rarely duplicated and it increases the user-friendly aspects of our product.

Other Directory: _____



Is there a guarantee that a directory will be published and will it be on time?

Real Yellow Pages: Some independent directories reserve the right not to print if deemed unprofitable or they will sell ads until specific profit margins are met, often delaying publishing for several months. BellSouth works on strict publishing schedules and is required to print a directory regardless of sales objectives.

Other Directory: _____



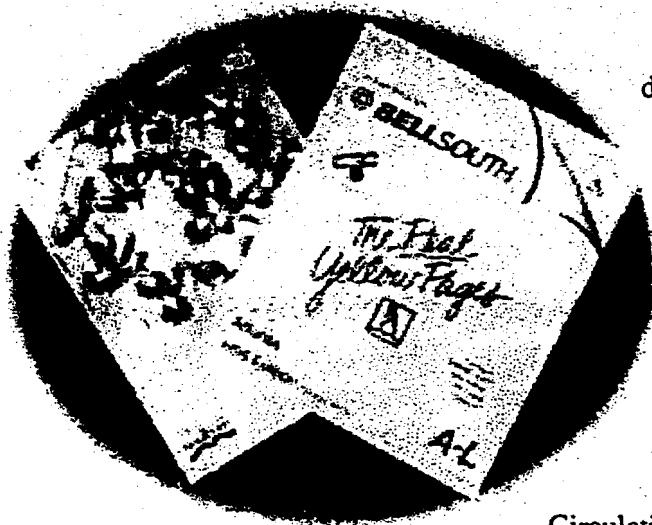
If there is an error or complaint, who do I call and how will the problem be handled?

Real Yellow Pages: BellSouth prints our business office lines in the front of each directory. We will route each of your calls to the proper representatives.

Other Directory: _____

What You Need To Know When You're Buying Yellow Pages Advertising

What You Need To Know When There's More Than One Directory Publisher



There are generally two types of directory publishers; one is affiliated with the local telephone company, such as BellSouth, the other is independently owned and operated. Advertising prices for the independent directories may appear competitive based on the size of the ad and the circulation of the directory. As with any advertising medium, however, you're not buying circulation, you're buying usage—and the two words are not synonymous.

Circulation refers to how many directories will be delivered initially.

Usage refers to how many people are using a particular directory and how frequently they use it.

The things you should take into consideration as you make your Yellow Pages advertising decision are:

- 1) How many people will actually use this directory?
- 2) Are people going to switch to a directory they're not accustomed to using?
- 3) How are different publishers proving the usage of their directories?

Six Questions It's Always Wise To Ask:

- 1) How can I be sure which directory publisher I'm dealing with? Ask the salesperson for identification if you're not sure.
- 2) Will newcomers in the area receive copies?
- 3) How do I make a complaint in case of an error?
- 4) Is payment required in advance?
- 5) How long has the product been in existence and how often will it be published?
- 6) Can I talk to other advertisers who've been pleased with their results?

There's a Stranger Coming to Town.

He's Out to get Your Money... and You Get Nothing, But a Higher Advertising Bill in Return

By WM. Jessen Editor

There is a stranger coming to town, and he's out to get you. This stranger is going to try to fool you by getting you to think he's your friend. He's going to try to convince you that the publisher you have used to advertise your business is weak and ineffective; and that his company is so big and strong, it will enable you to be much more successful than you

In the course of this discussion, I will use three specific cases that are going on now - or are in the immediate plans of a system publisher (a system publisher, as opposed to an independent, is one who operates a phone system in addition to being a Yellow Pages publishing company).

I'm going to make a flat statement, and I'm sticking to it. "The Yellow pages publishing business is a zero sum business." That, my friends, is a very important thing to know and never forget. Zero sum means that the pie doesn't get bigger (see chart on page #3). They will try to get you to forget it - by using their sales talents, their friendly personalities and anything else they can think of - to persuade you to sign up your company to advertise with

their Yellow Pages Directory in lieu of, or in addition to, your present Yellow Pages Directory.

But how can I say such a thing? Won't a new directory bring in new business? Not in my life time or yours! Always keep in mind one simple fact and that is, Yellow Pages Directories are passive forms of advertising; they only steer the customer, through various headings, to find what you have already decided you were looking for, *before* you even picked up the Yellow Pages Directory.

Let me illustrate it in this way. Publishers would have you believe that the Yellow Pages Directory is like a Sears Catalog. People thumb through it, see your ad and call you for your product or service, just like you might do while thumbing through the catalog - you see a dress that you can't live without or a fishing pole you've always wanted. Think about it, with Yellow Pages, it doesn't happen that way. Now, this is important! It is precisely for this reason that I can say that the Yellow Pages Directory is a zero sum game. Think of all the business produced by a single Yellow Pages Directory in a town we will call "Dodge City," USA. For clarity of argument, let's also say that there are

no other Yellow Pages Directories distributed in Dodge City, only the system directory, published by the local phone company. Anyone who lives in Dodge City that wants a product or service, and doesn't know where to find it, will, no doubt, pick up this local Yellow Pages Directory and decide who to call to provide that product or service. One day, a stranger walks into your business with a big smile on his face and says to you, "You are now going to have an option when deciding to place your Yellow Pages ad, because he represents the "American Dream" publishing company." They have decided Dodge City's public and business communities need a second choice when it comes to using the Yellow Pages Directory! The implication he gives is that, by signing up to place an ad in the American Dream Directory, your business will somehow be better off than ever before - because you now have a choice. He might even offer a free ad in the initial directory (this is called a prototype directory), or he may offer you a much better price, for the first year, than you are now getting, if you will only advertise in the American Dream Directory.

If you fall for this line of hogwash,

you may certainly regret it, for several reasons: #1 Where are all these additional business calls coming from? With only one directory in Dodge City, you are already receiving all the calls you might expect to receive - based on your ad placement, ad size, ad content, the use of RCF numbers and a host of variables, including how many years you have been an advertiser. #2 If the American Dream publishing company has their way, there will be two directories in every home & business, and if you only have an ad in one of these directories, and someone picks up the directory you're not in, you aren't even going to be considered as a choice, regardless of how good your ad may, or may not, be.

So now you decide that you must be in both directories because you have no way of getting the potential customer to pick up the only directory you have chosen to be in. Logically, you decide that you must be in both directories to insure an equal shot at the customer choosing your ad to call. However, now you have a problem you have never had before. Remember when the American Dream rep walked into your business and told you that you were paying too much for your ad in the local Yellow Pages Directory? #3 Well, now you have to pay for the American Dream ad and the ad in the old directory! In effect, you have dramatically used your advertising cost, and have no additional business to pay for it. That American Dream salesman really was a good salesman, wasn't he?

Zero sum means that the pie doesn't get bigger. If you find you are doing more business with the two ads, then someone else is - without question - doing less business, and even if you're one of the lucky ones to be doing more business, you still have dramatically increased your advertising costs.

See Graphic Chart Illustration On Page 3

So who really is giving you the business? Isn't it the American Dream Directory Publishing Company?

The only way to fight this situation is not to fall for their line, in the first place. Sure, they may offer you a free ad or cheaper ad than you are now paying for with the old Yellow Pages Directory, but is it cheaper - when you find out that you now have to be in both books to receive the same number of calls?

If you are fortunate enough to live in a city or town that still only has one directory, don't complain about what you are paying for your Yellow Pages ad - the American Dream directory may have plans that could change that for you.

What can you do to stop this from happening in your city or town? Simple - you must do two things!

#1 When the rep from a new directory walks in or calls you on the phone to offer you a "free" or a greatly reduced priced ad, simply remember it's not really free or cheaper - it comes with a big hook.

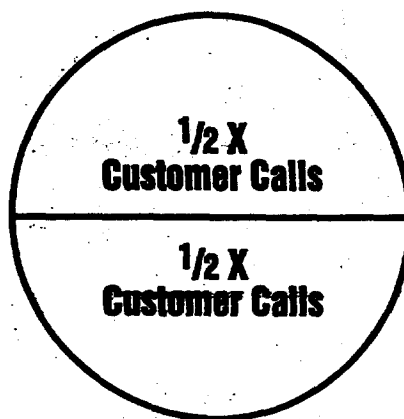
#2 You must tell your friends who are in business not to fall for this line, and tell them why - in no uncertain terms. They don't expect everyone to say "No", so they will keep offering their story until enough people say "Yes". It's very hard for people to say "No" to a free ad, or to an ad at 40 to 70% off the first year. If you've done any fishing, you know that you are just trying to get the fish to check out what you are offering him, so you can set the hook, deep! You don't have to be worried about being the one that got away, if you don't nibble at the bait.

Don't get me wrong - I love Yellow Pages advertising. My entire company couldn't exist without the Yellow Pages. I think that Yellow Pages are about the greatest books ever published for the purpose of business. I also believe that, if a little bit of something is great, it doesn't necessarily follow that a lot of the same thing will be even better. A little bit of sugar or cream in your tea or coffee may be good, but a lot would be ghastly. A little bit of insulin to a diabetic is life saving, but a lot would probably kill him or her.

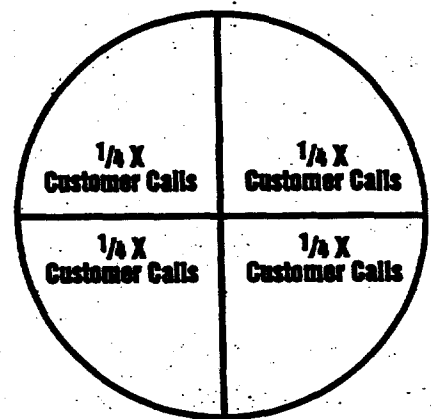
The Zero Sum Game, Played by Yellow Pages Publishers. More Directories Do Not Mean More Calls. You'll Always Lose!



100% of the calls produced by advertising, when there is only one published directory in an area.



Two Publishers dividing up this pie. You will get approximately the same number of calls - at twice the price. Such a deal!!!



Four Publishers slicing up this pie. Now it could cost you four times as much for the same number of calls. Makes you want to run right out and sign up, doesn't it?

**The Zero Sum Game is being played by
Yellow Pages Publishers.**

**You must fight this system with everything you have!
You must do more than refuse to play, or they still win!**

I believe a case can be made for the need for small, independent publishers or neighborhood books to support small businesses in a local area. They are always very inexpensive (compared to the system books or large independents), so most small businesses that do business in a limited geographic area are well served by them.

Now, let's deal with some specific cases of intrusions by system publishers or large independents into other system areas that would bring the aforementioned about, or situations that are now in progress.

In Everett, Washington, the system book is GTE. US West is coming to sell all of GTE's customers a new ad in a new directory. If you allow US West to have their way, all of the inhabitants of, not just Everett, but Marysville, Arlington, Camano Island, Lake Stevens, Monroe, Snohomish, Silverlake, Mill Creek and many others will soon be the "proud" recipients of the new "Everett and Vicinity" US West Yellow Pages Directory. And then, the fun will begin for you. Two directories to pay for, instead of just one. Isn't that a great deal? Especially since you're not going to receive any more calls, unless someone else gets less calls. When you're calculating all the savings you will be getting by advertising in this new directory, you be wise to subtract all the business you will lose by customers not finding you in the old directory, because they may call someone else.

playing - more directories do not bring more calls with them, they simply give you fewer in each directory than you would have had with one directory; and, as an added bonus for being taken in, you get to double your advertising costs. If not the first year, then when they raise their directory to its normal competitive price. (Depending on your ad size choice.) Isn't this exciting?

In Northern California, a company called Great Western Directories is overlaying the area of the system book, which happens to be Pacific Bell. Is turnabout fair play? Not really, because remember zero sum publishing? No more calls come from these new directories, only new advertising bills. Great Western Directories is well on the way to accomplishing its goal. It uses the expensive, but very effective "Prototype" method for starting a new directory. They give you a free ad in the first directory, and then come back and set the hook. Its works - for them.

A third publisher that comes to mind, when I'm talking about expanding one's territory, is Valley Yellow Pages. They, for the most part, overlay Pacific Bell's territory - starting from Bakersfield, Fresno, Stockton and a recent one, I believe, in Fairfield, California.

Not to be left out of this overlay expansion process is Pacific Bell. As I understand it, Pacific Bell is now going to publish new directories

Southern California - starting with Santa Barbara and moving East all the way to Ontario, CA. Just what we need - in what is already phone book heaven. I can't imagine a home or business in Southern California with less than 5 or 6 Yellow Page Books already.

Remember, zero sum publishing. No more calls, but guaranteed higher advertising bills.

A variation of the zero sum game is also being played on the publishers as well. Think about it. Every time a publisher overlays an area with another unnecessary directory, he weakens every Yellow Pages advertiser in that area. As anything gets weaker, it tends to eventually reach a breaking point; and, then, there is one less advertiser to support a self-destructive system. But the publishers will say that it's a free market system, and so it is. But they are the ones that keep crying about zero or negative growth; some have called it a "matured" market. The publishers can't have it both ways. If they want to see positive growth, they have to stop increasing the advertising cost burden of their advertisers, without compensating them with new business - and that, they cannot do.

Don't ever think for a moment that publishers who flood your areas with directories are your friends - because they are not! They are businessmen pursuing their American dream, and I can't fault them for that. But be warned, zero sum publishing works only for them, not for you!

THE ONE BOOK

1995

SINCE 1884



DISTRICT OF COLUMBIA

COMPLETE

YELLOW PAGES

From **A to Z** for all of
The District of Columbia

Including Business White Pages

Additional Yellow Pages Listings For:

**METROPOLITAN
WASHINGTON**

FEATURING

SHOPPING MALL GUIDE

See "Shopping Centers & Malls"
in the Yellow Pages of this Directory

INTERACTIVE

**FREE* INFORMATION
FROM YOUR PHONE!**

Updates on News, Sports, Weather, Soap Operas,
Microscopes, and More... see pages 2 and 3.

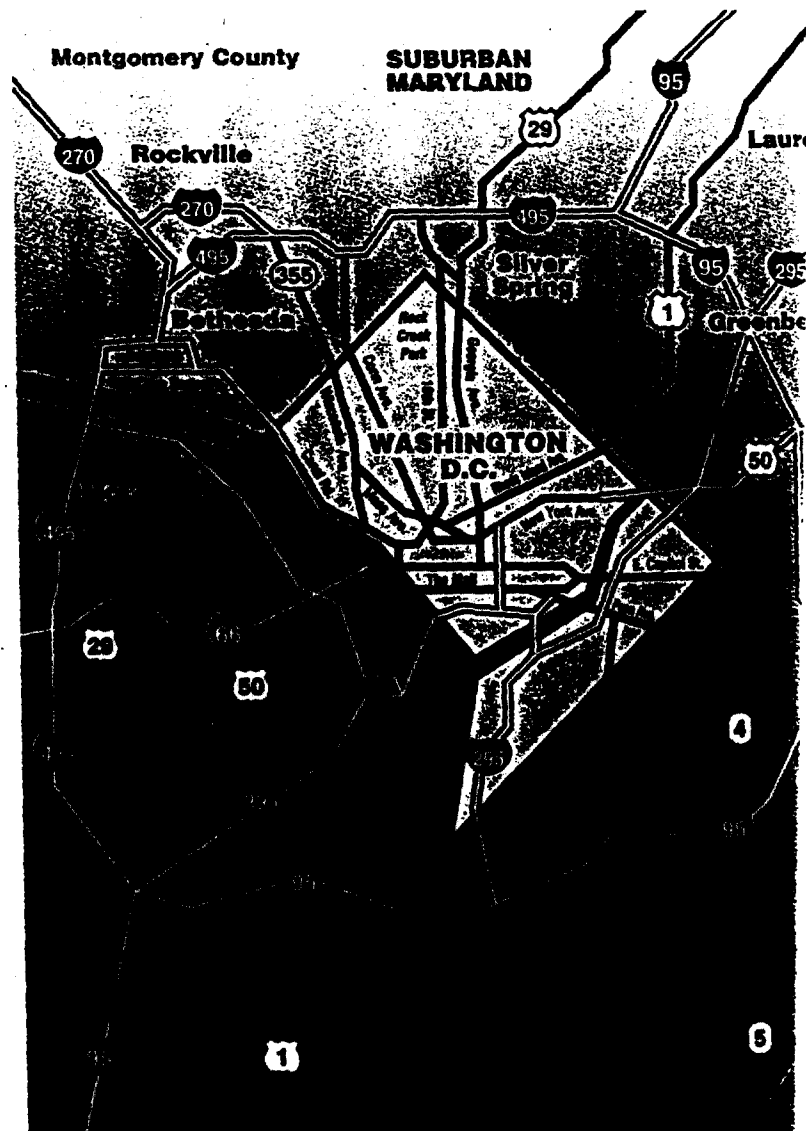
*Within local calling area

Recycling Information Immediately
Following White Pages Section

Reuben H. Donnelley



Donnelley a company of
The Dun & Bradstreet Corporation



1 St NW 682-0240
14th St NW 682-0150
1 Connecticut Av NW 682-0150

[illegible]

1000 Massachusetts Ave	314-007-1100
1000 Massachusetts St NE	214-800-0000
1000 Park Rd NW	265-058-0000
1000 Park Rd NW Church	265-482-0000
1000 Park Rd NW	387-830-0000
1000 Park Rd NW	429-143-0000
1000 Park Rd NW	889-362-0000
1000 Park Rd NW	882-102-0000
1000 Park Rd NW	761-010-0000
1000 Park Rd NW	301-899-7800
1000 Park Rd NW	872-190-0000
1000 Park Rd NW	301-229-0300
1000 Park Rd NW	895-343-0000
1000 Park Rd NW	658-240-0000
1000 Park Rd NW	760-800-0000
1000 Park Rd NW	968-030-0000
1000 Park Rd NW	137-812-0000
1000 Park Rd NW	414-610-0000
1000 Park Rd NW	463-710-0000
1000 Park Rd NW	561-313-0000

W	785-40
stein	872-63
in DC	547-73
St NW	233-08
orporation	233-09
St NW	291-79
Av NW	829-97
ine 1526 14th St NW	667-52
ave 3705 MH Av NW	829-42
St NW Washington	293-00
O Ga Av NW	882-83
	544-30
Wash	574-82
Washington MD	292-55
D PC	
	784-82
Class Av NW	575-82
655 15th St NW	879-51
ing Council	
	483-84
Ministry Inc	545-

3303 St NE	399-66
1330 Conn Ave NW	822-88
3345 1146 19th St NW	833-96
Inc	
btomatic MD	830 785-7
W NW	466-4
ystems	
en	800 523-2
Corp	
W NW	371-8
Corp 451 7th St SW	863-1
Way Columbia MD	301 596-1
3335 P St NW Wash	332-5
field Av Silver Spring MD	565-2
W	462-5
and Brake Service	
Myattsville MD	301 773-1
Myattsville	301 773-1
caurel MD	
Toll Free-800 369-0	
1525 9th St NW	387-6
W NW	387-6

Associates	703 978-
One Seared Stuff	703 978-
Rockville MD	301 762-
Rockville MD	301 294-
Northwest Area-District	
NW Washington	333-
	667-
Rockville MD	244-
	244-
	667-
	388-
IN NW	337-
	337-
	338-
ets Southeast Area	561-
Washington	584-
	584-
ington	547-
Northwest Area	
Northwest Area	554-
ets Washington Stores-	
	398-

Bell Atlantic

YELLOW PAGES



District of Columbia

des White Pages Business Listings Area Code 202

May April
1996-1997



NEW: Interactive Services!

- InfoTips in English and Spanish
- Consumer Information at Your Fingertips
- See Page 2 in the Showcase Pages